

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL INSURANCE COMPANY OF
AMERICA,

Plaintiff,

v.

RITA IRENE NUNEZ, MELCHOR
TATIA, ISAAC QUIROZ, PAUL LOPEZ,
VERONICA LOPEZ, and DOES 1 to 10,

Defendants.

No. 1:21-cv-00150-JLT-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART

GRANTING MOTION FOR DEFAULT
JUDGMENT IN THE FORM OF A
DECLARATION AGAINST DEFENDANTS
RITA IRENE NUNEZ, MELCHOR TATIA,
AND ISAAC QUIROZ REGARDING DUTY
TO DEFEND AND INDEMNIFY

DENYING WITHOUT PREJUDICE MOTION
FOR DEFAULT JUDGMENT IN THE FORM
OF A DECLARATION REGARDING
ATTORNEY'S FEES AND COSTS
INCURRED IN UNDERLYING ACTION

(Docs. 26, 32)

General Insurance Company of America filed this action against Rita Irene Nunez, Melchor Tatia, Isaac Quiroz, Paul Lopez, and Veronica Lopez. (Doc. 1.) Plaintiff issued a homeowner's insurance policy to Nunez, who resides with her husband, Tatia, and her son, Quiroz (collectively "the Insured Defendants"). (*See id.* ¶ 11.) The remaining Defendants, Paul and Veronica Lopez, have asserted liability claims against Defendants Nunez, Tatia, and Quiroz on the basis that, on May 29, 2020, Quiroz supplied a controlled substance, fentanyl, to Paul and Veronica Lopez's son, resulting in his death (the "Underlying Claim"). (*See id.* at ¶ 17.)

Plaintiff filed a motion for default judgment against the Insured Defendants. (Doc. 26.)

1 The assigned magistrate judge issued findings and recommendations recommending that the
2 motion be granted. (Doc. 32.) Those findings and recommendations were served on the parties
3 and contained notice that objections thereto were to be filed within 14 days. (*Id.*) No party has
4 objected, and the time in which to do so has passed. In accordance with the provisions of 28
5 U.S.C. § 636(b)(1)(B) and Local Rule 304, this Court has conducted a *de novo* review of this
6 case. Having carefully reviewed the entire file, the Court finds the findings and recommendations
7 to be supported by the record and proper analysis in part.

8 The motion for default judgment requests a declaration that Plaintiff owes no duty to
9 defend or indemnify to the Insured Defendants. (Doc. 26 at 2.) The Court agrees with the findings
10 and recommendations that the Underlying Claim does not fall within the insuring agreement. The
11 Court also agrees that the factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
12 1986), favor entry of default judgment in the form of declaratory judgments that Plaintiff has no
13 duty to defend or indemnify the Insured Defendants for any litigation brought against it arising
14 out of or related to the Underlying Claim.

15 The motion for default judgment also seeks a declaration that the Insured Defendants are
16 obligated to reimburse Plaintiff all defense fees and costs it has incurred in providing the Insured
17 Defendants a defense in connection with the Underlying Claim. (Doc. 26 at 2.) The findings and
18 recommendations correctly explain that California law allows insurers to be reimbursed for
19 attorney's fees and other expenses paid in defending insureds against claims for which there was
20 no obligation to defend. (Doc. 32 at 8.) However, the present record does not sufficiently support
21 issuance of the requested declaration because Plaintiff has presented no evidence regarding the
22 actual or estimated amount of fees and costs incurred in connection with its defense of the
23 Underlying Claim. As one district court explained in rejecting an analogous request for
24 reimbursement made alongside requests for declaratory relief: "The moving party has the burden
25 to 'prove up' the amount of damages." *United Specialty Ins. Co. v. Ghazaryan*, No. CV 20-04262
26 PA (PDX), 2020 WL 6784522, at *3 (C.D. Cal. Sept. 28, 2020).¹ The lack of record evidence on

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28 ¹ In *Ghazaryan*, the court was faced with a direct request for reimbursement of fees and costs.
2020 WL 6784522, at *3. Here, Plaintiff instead seeks a declaration that it is entitled to

the issue deprives the Court of the ability to apply the *Eitel* factors to this aspect of the motion for default judgment, as one of those factors is “the sum of money at stake in the action.” *Eitel*, 782 F.2d at 1472. For this reason, the request for a declaration regarding reimbursement of fees and costs will be DENIED without prejudice. Accordingly,

1. The findings and recommendations issued on April 12, 2022 (Doc. 32) are adopted in part.
2. Plaintiff’s motion for default judgment against Defendants Rita Irene Nunez, Melchor Tatia, and Isaac Quiroz (Doc. 26) is **GRANTED IN PART**;
3. Default judgment shall be entered in favor of Plaintiff and against Defendants Rita Irene Nunez, Melchor Tatia, and Isaac Quiroz as follows.
 - a. The Court **DECLARES** that Plaintiff has no duty, and never had a duty, to defend the Insured Defendants against the underlying third-party liability claims,
 - b. The Court **FURTHER DECLARES** that Plaintiff has no duty, and never had a duty, to indemnify the Insured Defendants in the underlying claim.
4. The remaining aspects of the motion for default judgment are **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated: **April 27, 2022**


UNITED STATES DISTRICT JUDGE

reimbursement of fees and costs. This is a distinction without a difference, as granting Plaintiff’s request for a declaration presumably would have the practical effect of approving a future request for fees and costs, else the request inappropriately seeks an advisory opinion.